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HOUSE BILL 586

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Dara Dana

AN ACT

RELATING TO HEALTH; PROVIDING FOR PARENTAL INFORMED CONSENT FOR CERTAIN MEDICAL SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] PARENTAL CONSENT--MEDICAL TREATMENT.--A person who has not reached the age of majority shall obtain informed consent from his legal guardian or other person authorized by law prior to obtaining treatment or diagnosis at a school-based clinic or a school-linked health clinic.

Section 2. Section 24-1-9 NMSA 1978 (being Laws 1973, Chapter 359, Section 9, as amended) is amended to read:

"24-1-9. CAPACITY TO CONSENT TO EXAMINATION AND TREATMENT FOR A SEXUALLY TRANSMITTED DISEASE. -- ~~[ Any person regardless of age has the capacity to consent to an~~

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1 ~~examination and treatment by a licensed physician for any~~  
2 ~~sexually transmitted disease.]~~ A person who has not reached  
3 the age of majority shall obtain informed consent from a legal  
4 guardian or other person authorized by law prior to an  
5 examination or treatment by a licensed physician for any  
6 sexually transmitted disease. "

7 Section 3. Section 24-1-13 NMSA 1978 (being Laws 1973,  
8 Chapter 359, Section 13) is amended to read:

9 "24-1-13. PREGNANCY--CAPACITY TO CONSENT TO EXAMINATION  
10 AND DIAGNOSIS. -- ~~[Any person regardless of age has the capacity~~  
11 ~~to consent to an examination and diagnosis by a licensed~~  
12 ~~physician for pregnancy.]~~ A person who has not reached the  
13 age of majority shall obtain informed consent from a legal  
14 guardian or other person authorized by law prior to an  
15 examination or diagnosis by a licensed physician for  
16 pregnancy. "

17 Section 4. Section 24-2B-3 NMSA 1978 (being Laws 1989,  
18 Chapter 227, Section 3) is amended to read:

19 "24-2B-3. SUBSTITUTED CONSENT.--Informed consent shall  
20 be obtained from a legal guardian or other person authorized  
21 by law when the person ~~[is not competent. A minor shall have~~  
22 ~~the capacity to give informed consent to have the human~~  
23 ~~immunodeficiency virus test performed on himself]~~ has not  
24 reached the age of majority. "

25 Section 5. Section 26-2-14 NMSA 1978 (being Laws 1972,

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1 Chapter 10, Section 1) is amended to read:

2 "26-2-14. CAPACITY TO SUBMIT TO DRUG ABUSE TREATMENT--  
3 LIABILITY FOR EXPENSES-- CONFIDENTIALITY OF RECORDS. --

4 A. ~~[Any person, regardless of age]~~ A person who  
5 has reached the age of majority may submit himself for drug  
6 abuse treatment to any licensed physician, public or private  
7 hospital, clinic supervised by a licensed physician or any  
8 institution or facility maintained in whole or in part by  
9 state or federal funds.

10 B. A person who has not reached the age of  
11 majority may submit himself for drug abuse treatment to any  
12 licensed physician, public or private hospital, clinic  
13 supervised by a licensed physician or institution or facility  
14 maintained in whole or in part by state or federal funds only  
15 after obtaining informed consent from a legal guardian or  
16 other person authorized by law.

17 ~~[B.]~~ C. No parent or other legal guardian shall be  
18 liable for payment of drug abuse treatment expenses if the  
19 treatment was made without his written consent.

20 ~~[C.]~~ D. The treating facility or person shall keep  
21 such records on drug abuse treatment as are necessary or  
22 required by law. The records shall be confidential and may be  
23 used only for rehabilitation, research, statistical and  
24 medical purposes. No such records or any information  
25 contained in them shall be discoverable by the state in any

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1 criminal prosecution."

2 Section 6. Section 32A-6-14 NMSA 1978 (being Laws 1995,  
3 Chapter 207, Section 16) is amended to read:

4 "32A-6-14. TREATMENT AND HABILITATION OF CHILDREN--  
5 LIABILITY.--

6 A. ~~[Any child shall have the right, with or~~  
7 ~~without parental consent, to consent to and]~~ A person who has  
8 not reached the age of majority shall obtain informed consent  
9 from a legal guardian or other person authorized by law in  
10 order to receive individual psychotherapy, group  
11 psychotherapy, guidance, counseling or other forms of verbal  
12 therapy [that do not include any aversive stimuli or  
13 substantial deprivations].

14 B. No psychosurgery or convulsive treatment shall  
15 be performed on a child except by order of a court upon a  
16 finding that the treatment is necessary to prevent serious  
17 harm to the child. Consent of a child or his parent, guardian  
18 or legal custodian to the treatment without a court order  
19 shall be invalid and shall not be a defense against any legal  
20 action that might be brought against the provider of the  
21 treatment.

22 C. No psychotropic medications or interventions  
23 involving aversive stimuli or substantial deprivation shall be  
24 administered to any child ~~[without proper consent. If the~~  
25 ~~child is capable of understanding the proposed nature of~~

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1 ~~treatment and its consequences and is capable of informed~~  
2 ~~consent, his consent shall be obtained before the treatment is~~  
3 ~~performed]~~ without obtaining informed consent from a legal  
4 guardian or other person authorized by law.

5 D. Psychotropic medications or interventions  
6 involving aversive stimuli may be administered to a child  
7 ~~[under the age of fourteen]~~ who has not reached the age of  
8 majority only with the informed consent of the child's parent,  
9 guardian or legal custodian. ~~[When psychotropic medications~~  
10 ~~or interventions involving aversive stimuli are administered~~  
11 ~~to a child under the age of fourteen, the child's guardian ad~~  
12 ~~litem shall be notified by the residential treatment or~~  
13 ~~habilitation program.]~~

14 E. Psychotropic medications or interventions  
15 involving aversive stimuli may be administered to a child  
16 ~~[fourteen years of age or older with the informed consent of~~  
17 ~~the child. When psychotropic medications or interventions~~  
18 ~~involving aversive stimuli are administered to a child~~  
19 ~~fourteen years of age or older, the child's parent, guardian~~  
20 ~~or legal custodian shall be notified by the residential~~  
21 ~~treatment or habilitation program]~~ who has not reached the age  
22 of majority only with the informed consent of his legal  
23 guardian or other person authorized by law. If the consent of  
24 the ~~[child]~~ legal guardian or other person authorized by law  
25 is not obtained, or if the mental health or developmental

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1 disabilities professional or physician who is proposing this  
2 or any other course of treatment or any other interested  
3 person believes that the child is incapable of informed  
4 consent, and the treatment provider or another interested  
5 person believes that the administration of the drug or program  
6 is necessary to protect the child from serious harm, any  
7 interested party may request that the children's court  
8 attorney petition the court for appointment of a treatment  
9 guardian to make a substitute decision for the child. The  
10 petition shall be served on the child and the child's  
11 attorney. A hearing on the petition shall be held within  
12 three court days. At the hearing, the child shall be  
13 represented by counsel and shall have the right to be present,  
14 to present witnesses and to cross-examine opposing witnesses.  
15 If after the hearing the court finds that the child is not  
16 capable of making treatment decisions, the court may order the  
17 appointment of a treatment guardian. When appointing a  
18 treatment guardian for the child, the court shall appoint the  
19 child's parent or guardian unless the child is in the custody  
20 of the department or the court finds that the child's parent  
21 or guardian is unable or unwilling to act in the child's best  
22 interests. When the child is in the custody of the  
23 department, the court shall appoint the child's legal  
24 custodian as treatment guardian, unless the court finds that  
25 the legal custodian is unable or unwilling to act in the

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1 child's best interests. The treatment guardian shall make a  
2 decision on behalf of the child whether to accept treatment,  
3 depending on whether the treatment appears to be in the  
4 child's best interests and is consistent with the least  
5 drastic means principle for accomplishing the treatment  
6 objective. In making this decision, the treatment guardian  
7 shall consult with the child and consider the child's  
8 expressed opinions, if any, even if those opinions do not  
9 constitute valid consent or rejection of treatment. The  
10 treatment guardian shall give consideration to any previous  
11 decisions made by the child in similar circumstances when the  
12 child was able to make treatment decisions. If a child, who  
13 is not a resident of a medical facility and for whom a  
14 treatment guardian has been appointed, refuses to comply with  
15 the decision of the treatment guardian, the treatment guardian  
16 may apply to the court for an enforcement order. The  
17 enforcement order may authorize any peace officer to take the  
18 child into custody and to transport the child to an evaluation  
19 facility and may authorize the facility to forcibly administer  
20 treatment. The treatment guardian shall consult with the  
21 physician or other professional who is proposing treatment,  
22 the child's attorney and interested friends or relatives of  
23 the child as the treatment guardian deems appropriate in  
24 making this decision. A child, physician or other  
25 professional wishing to appeal the decision of the treatment

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1 guardian may do so by filing an appeal with the court within  
2 three calendar days of receiving notice of the treatment  
3 guardian's decision. In such a decision, the child shall be  
4 represented by counsel. The court may overrule the treatment  
5 guardian's decision if it finds that decision to be against  
6 the best interests of the child.

7 F. When the court appoints a treatment guardian,  
8 it shall specify the length of time during which the treatment  
9 guardian may exercise treatment guardian powers, up to a  
10 maximum period of one year. If at the end of the guardianship  
11 period the treatment guardian believes that the child is still  
12 incapable of making treatment decisions, the treatment  
13 guardian shall petition the court for reappointment or for  
14 appointment of a new treatment guardian. The guardianship  
15 shall be extended or a new guardian shall be appointed only if  
16 the court finds the child is, at the time of the hearing,  
17 incapable of understanding and expressing an opinion regarding  
18 treatment decisions. The child shall be represented by  
19 counsel and shall have the right to be present and to present  
20 evidence at all such hearings.

21 G. If during the period of a treatment guardian's  
22 power the treatment guardian, the child, the treatment  
23 provider, a member of the child's family or the child's  
24 attorney believes that the child has regained competence to  
25 make treatment decisions, that person may petition the court

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1 for a termination of the treatment guardianship. If the court  
2 finds the child is capable of making treatment decisions, it  
3 shall terminate the power of the treatment guardian and  
4 restore to the child the power to make treatment decisions.

5 H. A treatment guardian shall only have those  
6 powers enumerated in the Children's Mental Health and  
7 Developmental Disabilities Act.

8 I. If a licensed physician believes that the  
9 administration of psychotropic medication is necessary to  
10 protect the child from serious harm that could occur while the  
11 provisions of this section are being satisfied, the licensed  
12 physician may administer the medication on an emergency basis.  
13 When medication is administered to a child on an emergency  
14 basis, the treating physician shall prepare and place in the  
15 child's medical records a report explaining the nature of the  
16 emergency and the reason that no treatment less drastic than  
17 administration of psychotropic medication without proper  
18 consent would have protected the child from serious harm.  
19 When medication is administered to a child on an emergency  
20 basis, the child's parent, guardian or legal custodian and the  
21 child's attorney or guardian ad litem shall be notified by the  
22 residential treatment or habilitation program.

23 J. Liability of persons providing mental health  
24 and developmental disability services to children shall be as  
25 follows:

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1 (1) no mental health or developmental  
2 disability professional or treatment facility is required to  
3 detain, treat or provide services to a child when the child  
4 does not require detention, treatment or services;

5 (2) no mental health or developmental  
6 disability professional or facility may be held liable solely  
7 on the basis of misrepresentations made to them by a child  
8 seeking treatment or habilitation services or by a child's  
9 parent [~~provided~~] if the professional or the facility's staff  
10 acted in good faith;

11 (3) no mental health or developmental  
12 disability professional or facility may be held liable solely  
13 on the basis of reliance upon a tribal court order [~~provided~~]  
14 if the mental health or developmental professional or the  
15 facility's staff acted in good faith;

16 (4) nothing in the Children's Mental Health  
17 and Developmental Disabilities Act shall be construed to  
18 relieve any professional or facility from liability for  
19 negligence in the diagnosis, treatment or services provided to  
20 any child; and

21 (5) nothing in the Children's Mental Health  
22 and Developmental Disabilities Act shall be construed to  
23 relieve any professional or facility from duties placed on  
24 [~~them~~] it by reporting laws relating to the detection of child  
25 abuse.

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K. A parent shall be responsible for the cost of mental health services provided to the parent's child. This section does not affect the right of any child to receive free mental health or developmental disability services under any publicly supported program or the right of any parent to reimbursement from, or payment on the child's behalf by, any publicly supported program or private insurer; provided that the state shall pay no more than four hundred dollars (\$400) per day for the cost of such services. The state may adjust this rate. However, any adjustment should be based on a cost analysis conducted by the department and reviewed by the legislative finance committee. "